IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:1.2.2002

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THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.NO.411 OF 1998

The Management of Durgabhai
Deshmukh General Hospital & Research
Centre, Andhra Mahila Sabha by its
Vice President Smt.Akkama Krishnamoorthy,
No.11, Dr.Durgabhai Deshmuk Road,
Madras.28. .. Petitioner.

Vs.

1. The Appellate Authority under the
Payment of Gratuity Act (The Deputy
Commissioner for Labour (Appeals),
D.M.S. Complex, Mount Road, Madras.6.

2. The Controlling Authority under the
Payment of Gratuity Act (Asst.Commr. of
Labour) D.M.S. Complex, Mount Road,
Madras.6.

3. The State of Tamil Nadu by its Secretary,
Health and Family Welfare Department,
Fort St.George, Madras-9.

4. C.H.Prasad Rao,
V.C.Garden II Street,
R.A.Puram, Madras.28. .. Respondents.

Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records of the
first respondent in Payment of Gratuity Appeal No.4 of 1997 dated
30.7.1997 and quash the said orders and made therein.

! For Petitioner: : Mr.G.M.Nathan for
Mr.K.V.Rajan.
^ For Respondents: : Mr.M.Mahalingam,G.A. R1-R3.
Mr.S.N.RAvichandran -R4.

: O R D E R
Petitioner Management has filed this writ petition praying to

issue a Writ of Certiorari calling for the records of the first respondent in Payment of Gratuity Appeal No.4 of 1997 dated 30.7.1997 and quash the said orders and made therein.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that the petitioner is a voluntary organization, recognized as an All India Social Service Organization registered under the Societies Registration Act, and that it is running several institutions such as schools, nursing home, hostels etc.

3. The fourth respondent was originally employed on 1.5.1970 in the petitioner's nursing home as Accounts clerk cum typist, that the fourth respondent voluntarily opted to work under the Family Welfare Scheme from 12.11.1973 and was working till his superannuation on 30.9.19 94 under the grant scheme as a store-keeper cum accounts clerk which was later converted to the post of computer operator as per Government order dated 5.11.1989, and that the Government have authorised the absorption of the fourth respondent as computer operator, which was extended year after year, that the fourth respondent was drawing salary and allowances on par with Government Servants, which was revised in terms of third, fourth and fifth pay commissions,that on one occasion, the Government found that the fourth respondent was not qualified for holding the post of the computer operator and consequently, his pay and allowances were not released by the Government; that when the fourth respondent went to Court for relief, the Government relaxed the qualification and released pay and allowances of the fourth respondent.

4. After the retirement, the fourth respondent wrote a letter for payment of terminal benefits when he was informed that he was not entitled to payment of gratuity, that the fourth respondent filed an application after a delay of 340 days with an application for condoning the delay before the second respondent for payment of gratuity, that on notice by the second respondent, petitioner filed counter opposing the application for condoning the delay, but the second respondent without holding any enquiry condoned the delay on the same day and proceeded with the enquiry in the main application for payment of gratuity; that on appeal, the first respondent refused to consider their objection on the ground that it is an order in an interim application and appeal would lie before him only against the final orders,that the application of the fourth respondent for payment of gratuity to the second respondent under Sec.7 of the Payment of Gratuity Act was allowed holding that the fourth respondent was directly employed by the petitioner, so they are liable to pay the Gratuity, against which the petitioner filed appeal before the first respondent, which was dismissed on 30.9.1997. Aggrieved by the order of the first respondent, petitioner has filed this writ petition.

5. The case of the fourth respondent is that he was working under the petitioner as store-keeper-cum-accountant and computer operator from 1.5.70 and he retired from service on 30.9.1994 after completion of 25 years of service, his last drawn wages were Rs.2965/- per month that after his retirement his gratuity amount was not settled and hence he filed P.G.No.67 of 1996 before the Assistant Commissioner of Labour, Chennai, that the petitioner management in their counter before the Controlling Authority had stated that "the respondent/workman joined the petitioner nursing home from 1.5.70 to 11.11.73 as an Accounts

clerk-cum-typist and from 12.11.73 he worked under the grantin-aid scheme" that, therefore, he is not entitled to gratuity amount from the petitioner management; that after elaborate enquiry the Controlling Authority correctly arrived at the conclusions and passed an order dated 7.8.96 directing the petitioner management to pay a sum of Rs.41,654/- to the respondent/workman as gratuity, that the petitioner management had not disputed the length of service and wages and he retired only from the petitioner management that the respondent was transferred on 12.11.73 to grant-in-aid scheme which is evident from Ex.P.2, that, therefore, this allegation is not correct, that the respondent was appointed by the petitioner management and the power of taking disciplinary action against the respondent rests with the petitioner management and the management witness besides admitting the same further deposed that the retirement was given only by the management, that the Ex.P.3 is the conduct certificate given by the same management continuously from 1.5.1970, that the said document is also not disputed by the management, that in so far as the condonation of delay is concerned, the management failed to file counter in I.A.No.34 of 1996,despite reasonable opportunity given by the controlling Authority and therefore, the delay was condoned and the same was not objected to by the counsel for the management; that in fact the counsel for the management signed the proceedings without any objection and therefore, the respondent/workman would pray to dismiss the writ petition.

6. During the arguments, the learned counsel for both would reiterate the same points that formed part of the proceedings before the Controlling and Appellate Authorities below. However, the learned counsel for the petitioner would submit a decision reported in CEMENT CORPORATION OF INDIA LTD., NEW DELHI, V. S.T.VEERAN AND ANOTHER (1987 LAB. I.C.1173) wherein it is held:

"7. But for a long time the functional view adumbrated by Jayasree' s case (1967 (1) Andh WR 247) (mentioned supra) remained unsupported. The result was altogether a minor constitutional tragedy. The then prevailing view permitted the governmental bodies operating in vast areas and exercising effectual governmental power over persons and things and events to abdicate their vital constitutional responsibilities by wearing distinct corporate veils. Released by the theory of separate corporate identity from shackles of judicial supervision and held uncontrollable by and unaccountable to Part III of the Constitution these bodies have showered ruin and disaster on many a promising and sailing young life. In Kanaka Durga Devi v. Kakatiya Medical College, AIR 1972 Andh Pra.83, the hopes of an young girl aspiring to become a doctor were dashed to the ground by the holding of a Division Bench of this Court that theKakatiya Medical College was not accountable to Article 14 of the Constitution. Similarly in the above Jayasree's case (supra) the lift chance of an young girl to become a Medical Doctor was lost through the holding of the appellate Court declaring that the Kakatiya Medical College was a private body and was, therefore, not amenable to Part III of the Constitution. In P.V.Naidu v. Andhra Pradesh Mining Corporation, (1994)1 APLJ 222 where this Court held that no writ lies against the Andhra Pradesh Mining Corporation to set aside a wholly arbitrary order of termination passed by that body putting an end to the service career

of a faultless and long serving Engineer, the promising career of faultless engineer was created notwithstanding the fact that the Mining Corporation is wholly owned and controlled by the Government of Andhra Pradesh. So was the fate of the employees of the Government Corporation called 'LIDCAP' who had been denied protection by this Court on the ground that no writ lies against the LIDCAP. What the Secretaries of the Government departments could not do from the Secretariat was then found possible to be done by them while acting as the Directors of these bodies. When the activities of separate legal personalities though performed acting as the alterage of the State had succeeded in the past in escaping judicial supervision of the Courts under fundamental rights it was then possible for the State to create a Corporation and act tyrannically through its creation and yet disclaim its accountability to Part III of the Constitution. But now by reason of the authoritative pronouncements of our Supreme Court beginning with Bharat Petroleum's case, AIR 1981 SC 212 followed in Ajay Hasia's case, AIR 1981 SC 487, it has come to be firmly established that an activity carried on with the direct and regular financial support of the State with the control of the State extending over lthat activity will be counted as a State Action for purposes of subjecting such activity to Part III of the Constitution notwithstanding the fact that body which carries on that activity is not a part of the government department and is, in fact, a separate legal person according to the ordinary (notions) of law."

6. In consideration of the pleadings , having regard to the materials placed on record and upon hearing the learned counsel for both, the main points that stand upper most for consideration are:-

i) Whether the fourth respondent was not the employee of the petitioner management and whether he was employed under the Tamil Nadu Government Family Welfare Scheme?

ii) Whether the Controlling Authority failed to follow the ratio of the case reported in 1987 LAB.I.C.1173 (CEMENT CORPORATION OF INDIA V. VEERAN AND OTHERS)?

iii) Whether it is true, that the respondent/workman at his volition got transferred to Family Welfare Grant-in-Aid Scheme or whether it was the management which transferred him to the said scheme?

iv) Whether the condonation of delay by the Controlling Authority is irregular?

7. Point Nos.1 and 3 framed here are interconnected and therefore, both these points are dealt with together. It is an admitted case of the writ petitioner that the respondent/workman was employed in the petitioner management viz. Andhra Mahila Sabha Nursing Home in the year 1970 and thereafter in the year 1973 he got transferred by the petitioner management to the Family Welfare Grant-in-Aid Scheme implemented by the management and therefore, the management would come forward to say that he is not entitled to gratuity amount from the management. The Controlling Authority having gone into this aspect and on a careful consideration of the facts and circumstances encircling these points would ultimately arrive at the conclusion to pay a sum of Rs.4 0,654/- to the respondent/workman as gratuity on ground that the management did not at all dispute the length of service and wages of the respondent/workman and he was allowed to retire only from the management

and as evident from Ex.P2, it is the management that transferred the respondent on 12.11.1973 to the Grant-in-Aid Scheme and moreover, since the power of disciplinary action against the respondent resting with the petitioner management, as it came to be known from the evidence, the Controlling Authority would arrive at the firm conclusion that it was under the petitioner management the respondent retired. The Controlling Authority would also find that the conduct certificate of the respondent in Ex.P3 had been continuously given from 1.5.1970 onwards only by the petitioner management and since this document is not at all disputed, no different conclusion could be arrived at, than to hold that the respondent was working right under the nose of the petitioner management and retired only from the petitioner management and therefore, he is entitled to the gratuity from the management.

8. So far as the point No.2 is concerned, as extracted here before, the Apex Court has held that "an activity carried on with the direct and regular financial support of the State with the control of the state extending over that activity will be counted as a State action for the purpose of subjecting such activity to Part III of the Constitution notwithstanding the fact that body which carries on that activity is not a part of the Government department and is, in fact, a separate legal person according to the ordinary notions of law."

9. Regarding the condonation of delay ordered by the Controlling Authority, the Controlling Authority is having its own discretion to consider and decide the question on the facts and circumstances of the case and it is able to be seen from the records that there had been no opposition from the other side by filing counter thus meeting the points raised in the condonation application nor had there been any objection raised on the part of the learned counsel appearing on behalf of the management and therefore easy conclusions have been arrived at by the Controlling Authority in allowing the application filed on the part of the respondent before it seeking condonation of delay. Moreover, so far as this petition is concerned, the upper forums of law have time and again held that however, the delay is either longer or even unexplained on the part of the petitioner, no doubt the petitioner must be punished, but not with denial of opportunity to seek his remedy in the main issue, but with only costs. Since in the case on hand there was no stiff opposition raised on the part of the management so far as this question was concerned and therefore, the Controlling Authority had easily allowed the petition even without imposing any costs.

10. The Appellate Authority having dealtwith the subject in its own way and having held a clear discussion on all points raised particularly these vital aspects taken up for consideration in the writ petition and would ultimately concur with the Controlling Authority thus meeting all the points raised in the grounds of appeal and would hold that the Appellate Authority is of the view that the Controlling Authority has correctly concluded the issues based on evidence placed on records and that there is no necessity on its part to interfere with the orders passed by the Controlling Authority in P.G.Case No.67/96 and in result, would confirm the same dismissing the appeal preferred by the management.

11. On a overall consideration of the facts and circumstances

encircling the whole affair connected to the claim of the respondent and the objection by the management, under the relevant provisions of the Payment of Gratuity Act 1992, whether it is by the Controlling Authorities or the Appellate Authority they have passed their orders, on following the procedures established by law and with due opportunity for parties to be heard and in full consideration of the facts and circumstances pleaded and the evidence placed on record and appreciating the same in the manner expected by law, so as to arrive at their conclusions in full realization of their duties and responsibilities in dealing with the subject, respectively as the Controlling Authority and the Appellate Authority and this Court is unable to see any patent error or perversity in approach or legal infirmity or inconsistency in their orders. In the concurrent orders passed by both the Authorities below especially the order passed by the Appellate Authority, which is impugned herein since having been passed in full consideration of all the facts and circumstances and the position of law, this Court is of the view that the interference of this Court sought to be made into such a well considered and merited order passed by the Appellate Authority under the Payment of Gratuity Act is neither necessary nor warranted in any manner as it is sought to be made in this writ petition and in these circumstances, the only course open for this Court is to dismiss the above writ petition as without merit.

In result,

i)the above writ petition does not merit acceptance and the same is dismissed as devoid of merits;

ii)the order dated 30.7.1997 passed by the appellate authority under the Payment of Gratuity Act in his P.G.A.No.4 of 1997 is hereby confirmed.

iii)However, in the circumstances of the case, there shall be no order as to costs.

1.02.2002.
Index:Yes/no
Internet:Yes/No.
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1. The Commissioner of Labour (Appeal), Chennai-6
2. The Assistant Commissioner of Labour, Chennai-6.

V.KANAGARAJ,J

ORDER IN W.P.NO.411 OF 1998

1 .02.2002.

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